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IN THE

Supreme Court of the United States

OCTOBER TERM, 1982

OBERT E. BRADY,

Petitioner,

v.

ALLSTATE INSURANCE COMPANY,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

KALVIN M. GROVE
JEFFERY A. COLBY
FOX AND GROVE, CHARTERED
233 South Wacker Drive
Chicago, Illinois 60606
312/876-0500
Counsel For Respondent

Pandick Press Midwest, Inc., Chicago • 454-7600

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QUESTION PRESENTED

Whether the Court of Appeals, in reversing the judgment of the district court, properly found that there was not substantial evidence to support the jury's verdict.

REASONS FOR DENYING THE WRIT

This case involves a claim by Petitioner Brady that his discharge from employment by Respondent Allstate was the result of "reverse discrimination" in violation of 42 U. S. C.

§ 1981. The Court below found that, "even assuming that Brady was able to establish a *prima facie* case, it is clear that he was unable to meet the ultimate burden of persuasion on the issue of whether Allstate acted with discriminatory purpose. . . . Allstate articulated specific and persuasive non-discriminatory business reasons why it treated Brady [a white] in one fashion and Williamson [a black] in another." Pet. App., pp. 10-12. Accordingly, a unanimous Court of Appeals concluded that "[t]he district court should have directed a verdict for Allstate at the conclusion of all the evidence or granted Allstate's motion for judgment notwithstanding the verdict." Pet. App., p. 14. Respondent submits that this run-of-the-mill reversal of a trial court jury verdict does not present a question which warrants review by this Court.

The instant case does not present any of the considerations for granting a writ of certiorari set forth in Supreme Court Rule 17: it does not raise a constitutional issue,[1] nor does it raise any important undecided statutory issue or require any interpretation of this Court's recent decision in *Pullman-Standard* v. *Swint*, ____ U. S. ____, 72 L. Ed. 2d 66 (1982),[2] nor is there

[1] Contrary to the allegations of the petition, this case raises no Seventh Amendment question. Although the petition (p. 18) alleges that the present case "exemplifies a disturbing trend among lower appellate and trial courts" evidencing an erosion of the right to a jury trial, it cites no support for that position, nor is there any indication in the decision below that the lower court ever addressed this concern. Indeed, as indicated elsewhere in the petition (pp. 27-32), this case essentially involves only the question of whether there was sufficient evidence to support the jury's verdict. That issue, which occurs on a daily basis in the lower courts, does not present any unique or novel matter or raise any real constitutional issue.

[2] Petitioner does not assert that there is any need for this Court to re-examine the law with respect to 42 U. S. C. § 1981 or its decision in *Pullman-Standard*. Instead, Petitioner merely claims that the court below misapplied these established criteria. This assertion is incorrect for the reasons amply described by the Court of Appeals. Pet. App., pp. 11-14.

any conflict or confusion in the lower courts, nor is it even alleged that the Court of Appeals applied an improper standard of review. Rather, this controversy involves simply a disagreement over the analysis of the particular facts involved, a dispute that does not necessitate the utilization of the valuable resources of this Court. See, e.g., *United States* v. *Johnston*, 268 U. S. 220, 227 (1925).

CONCLUSION

For the foregoing reasons, the petition for writ of certiorari should be denied.

Respectfully submitted,

KALVIN M. GROVE
JEFFERY A. COLBY
FOX AND GROVE, CHARTERED
233 South Wacker Drive
Chicago, Illinois 60606
312/876-0500
Counsel For Respondent